

ORIGINAL

EJ-001



2005-0004555

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):
☒ Recording requested by and return to: (510) 622-2130
JANILL L. RICHARDS, Deputy Attorney General (SBN 173817)
California Attorney General's Office
1515 Clay Street, 20th Floor- P.O. Box 70550
OAKLAND, CA 94612-0550

☒ ATTORNEY FOR ☒ JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

Recorded
Official Records
County Of
BUTTE
CANDACE J. GRUBBS
Recorder
ROSEMARY DICKSON
Assistant
09:02AM 25-Jan-2005

REC FEE .00
Travis
Page 1 of 69

NAME OF COURT: UNITED STATES DISTRICT COURT
STREET ADDRESS: 501 "I" STREET, SUITE 4-200
MAILING ADDRESS: 501 "I" STREET, SUITE 4-200
CITY AND ZIP CODE: SACRAMENTO, CA 95814
BRANCH NAME: EASTERN DISTRICT OF CALIFORNIA

FOR RECORDER'S USE ONLY

PLAINTIFF: STATE OF CALIFORNIA, ON BEHALF OF DEPT. OF TOXIC SUBSTANCES CONTROL
DEFENDANT: ALBERT CAMPBELL, ET AL.

ABSTRACT OF JUDGMENT ☐ Amended

CASE NUMBER:

CIV-S-93-604-FCO

FOR COURT USE ONLY

1. The ☒ judgment creditor ☐ assignee of record applies for an abstract of judgment and represents the following:

a. Judgment debtor's

Name and last known address
VICTOR MUSCAT TESTAMENTARY TRUSTS
C/O JERALD GREENBERG
P.O. BOX 8
ARMONK, NY 10504-0008

b. Driver's license No. and state: N/A

c. Social security No.: N/A

d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):

☒ Unknown
☒ Unknown

e. ☐ Original abstract recorded in this county:

(1) Date:

(2) Instrument No.:

f. ☒ Information on additional judgment debtors is shown on page two.

Date: January 13, 2005

JANILL L. RICHARDS

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

2. a. ☐ I certify that the following is a true and correct abstract of the judgment entered in this action.

b. ☒ A certified copy of the judgment is attached.

3. Judgment creditor (name and address):

California Department of Toxic Substances Control
8800 Cal Center Drive- Sacramento, CA 95826-3200

4. Judgment debtor (full name as it appears in judgment):

Victor Muscat Testamentary Trusts

6. Total amount of judgment as entered or last renewed:
\$ 5,925,000

7. ☐ An ☒ execution lien ☐ attachment lien is endorsed on the judgment as follows:

a. Amount: \$ Full property value- see judgment ¶ 5.2

b. In favor of (name and address):

California Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

5. a. Judgment entered on (date): June 14, 2004

b. Renewal entered on (date):

c. Renewal entered on (date):

8. A stay of enforcement has

a. ☒ not been ordered by the court.

b. ☐ been ordered by the court effective until (date):

9. ☐ This judgment is an installment judgment.

This abstract issued on (date)
JAN 14 2005

Jack L. Wagner

Clerk, by

Deputy

PLAINTIFF: STATE OF CALIFORNIA, ET AL.	CASE NUMBER:
DEFENDANT: ALBERT CAMPBELL, ET AL.	CIV-S-93-604-FCD

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS

10. ☐ Name and last known address
☐ ESTATE OF VICTOR MUSCAT
☐ C/O DALE C. CAMPBELL
☐ WEINTRAUB GENSHLEA CEDIAK SPROUL
☐ 400 CAPITOL MALL, 11th FLOOR
☐ SACRAMENTO, CA 95814
 Driver's license No. & state: N/A ☐ Unknown
 Social security No.: N/A ☐ Unknown
 Summons was personally served at or mailed to (address):

14. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

11. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

15. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

12. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

16. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

13. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

17. ☐ Name and last known address
☐
☐
 Driver's license No. & state: ☐ Unknown
 Social security No.: ☐ Unknown
 Summons was personally served at or mailed to (address):

18. ☐ Continued on Attachment 18.



DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *State of California v. Albert Campbell, et al.*

No.: CIV-S-93-604-FCD-JFM

I, Tanisha Marshall declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 13, 2005, I served the attached **ABSTRACT OF JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, Suite 2000, Oakland, California 94612-1413, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 13, 2005, at Oakland, California.

TANISHA MARSHALL

Declarant

Tanisha Marshall

Signature



State of California, et al. v. Albert Campbell, et al.
Service List (20th Street Site)

[VICTOR H. MUSCAT]

Victor H. Muscat
3830 Bonnyvale Road
Brattleboro, VT 05301-8205

[ESTATE DEFENDANTS]

Dale C. Campbell, Esq.
Weintraub Genshlea Chediak & Sproul
400 Capitol Mall, 11th Floor
Sacramento, CA 95814

[WESTERN RESOURCES, INC.]

Philip Hunsucker
Brian Zagon
Resolution Law Group, P.C.
3717 Mount Diablo Boulevard, Suite 200
Lafayette, CA 94549

[VIC, INC.]

Craig C. Allison, Esq.
Stevens & O'Connell, LLP
400 Capitol Mall, Suite 1450
Sacramento, CA 95814

**[TUPACK VERPACKUGEN
GESELLSCHAFT, m.b.H.]**

J. Hayes Kavanagh
Kavanagh Maloney & Osnato LLP
415 Madison Avenue
New York, NY 10017

**[SCOTT McGOWAN, EXECUTOR
OF THE ESTATE OF CLAY
McGOWAN,
AND FAYE McGOWAN]**

Michael T. Shepherd, Esq.
Richard L. Crabtree
Shepherd & Crabtree
1367 East Lassen Ave., Suite 1
Chico, CA 95973

Courtesy Copies:

**[LOUISIANA PACIFIC
CORPORATION]**

Kerry E. Shea
Thelen Reid & Priest
101 Second Street, Suite 1800
San Francisco, CA 94105-3601

**[For Commercial Union (through Victor
Entity policies)]**

Edward T. Clifford
Greve, Clifford, Wengel & Paras
2870 Gateway Oaks Drive, Suite 210
P.O. Box 2469 (95812-2469)
Sacramento, California 95833-4324

**[For Ace/INA Holdings (through Victor
Entity policies)]**

Deborah A. Aiwasian
Berman & Aiwasian
725 Figueroa Street, Suite 1050
Los Angeles, California 90017

**[For The Hartford Insurance Company
(through Victor Entity policies)]**

Michael Ellison
Smith, Deverich, Ellison & Harraka
19900 MacArthur Boulevard, Suite 700
Irvine, CA 92612

DATE: January 13, 2005



ORIGINAL

FILED

JUN 14 2004

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY _____
DEPUTY CLERK

1 BILL LOCKYER, Attorney General
of the State of California
2 THEODORA BERGER
Assistant Attorney General
3 KEVIN JAMES, State Bar No. 111103
G. LYNN THORPE, State Bar No. 112122
4 JANILL L. RICHARDS, State Bar No. 173817
Deputy Attorneys General
5 1515 Clay Street, 20th Floor
Oakland, California 94612-1413
6 Telephone: (510) 622-2100
Fax No.: (510) 622-2270

7 Attorneys for Plaintiff State of California on behalf of
8 California Department of Toxic Substances Control

LODGED

JUN - 8 2004

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

12 STATE OF CALIFORNIA, on behalf of the
California Department of Toxic Substances Control,

Plaintiff,

v.

15 ALBERT CAMPBELL, Executor of the ESTATE OF
VICTOR MUSCAT; ROBERT TIBERIIS, Executor
16 of the ESTATE OF VICTOR MUSCAT; WESTERN
RESOURCES, INC., as Receiver of the VICTOR
17 MUSCAT TESTAMENTARY TRUSTS; VIC, Inc.,
a New Jersey corporation; TUPACK
18 VERPACKUNGEN GESELLSCHAFT m.b.H., an
Austrian corporation; SCOTT MCGOWAN,
19 Executor of the ESTATE OF CLAY MCGOWAN;
FAYE MCGOWAN, an individual; the CITY OF
20 CHICO; MIDDLETON MOULDING COMPANY, a
California Corporation; SIERRA PACIFIC
21 INDUSTRIES, a California corporation; GERALD
RICHTER and LINDA RICHTER, individuals;
22 VICTOR INDUSTRIES CORPORATION, a Florida
corporation; VICTOR METAL PRODUCTS
23 CORPORATION, a Delaware corporation; and
VICTOR INDUSTRIES CORPORATION OF
24 CALIFORNIA, a California corporation,

Defendants.

26 AND RELATED CROSS-ACTIONS AND THIRD-
27 PARTY ACTIONS

No. CIV-S-93-604 FCD JFM

SETTLEMENT AGREEMENT
AND CONSENT DECREE RE
20TH STREET SITE

I hereby certify that the annexed
instrument is a true and correct copy of
the original on file in my office.

ATTEST: JACK L. WAGNER

Clerk, U. S. District Court
Eastern District of California

By _____ Deputy Clerk

Dated 1/7/05

SETTLEMENT AGREEMENT AND CONSENT DECREE RE 20TH STREET SITE

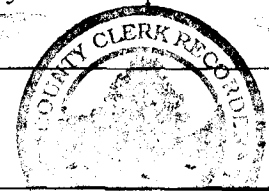
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INTRODUCTION

Plaintiff, the State of California on behalf of the California Department of Toxic Substances Control ("DTSC"), has filed a Fourth Amended Complaint (the "Complaint") in the United States District Court for the Eastern District of California (the "Court"), pursuant to, among other things, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*; the California Hazardous Substance Account Act ("HSAA"), California Health and Safety Code §§ 25300 *et seq.*; and state nuisance law. The Complaint alleges claims for relief relating to two sites in Chico, California, the "Airport Site" (resolved by the Settlement Agreement and Consent Decree entered September 19, 2002) and the "20th Street Site" (defined below).

The first, second and third claims for relief in the Complaint pertain solely to the 20th Street Site; the seventh claim for relief pertains to both the Airport Site and the 20th Street Site. Together, the first, second, third and seventh claims for relief name as defendants Albert Campbell ("Campbell"), an executor of the Estate of Victor Muscat; Robert Tiberiis ("Tiberiis"), an executor of the Estate of Victor Muscat; and Marjorie Tackman and Alan Tackman, representatives of the Estate of Charles Tackman ("Tackman Estate"). DTSC has voluntarily dismissed all claims against Campbell and Tiberiis in their individual capacities and against the Tackman Estate. Campbell and Tiberiis in their representative capacities will be referred to, collectively, as "Estate Defendants." The first, second, third and seventh claims also name as defendants Western Resources, Inc., as Receiver for the Victor Muscat Trusts (the testamentary trusts created by the last will and testament of Victor Muscat), U/C/O Reaffirmed April 5, 1995 ("WRI"); VIC, Inc., a New Jersey corporation; Tupack Verpackungen Gesellschaft m.b.H. ("Tupack"), an Austrian corporation; Scott McGowan, as the executor of the Estate of Clay McGowan ("McGowan Estate"); Faye McGowan; Victor Industries Corporation ("Victor Industries-Florida"), a Florida corporation; Victor Metal Products Corporation ("Victor Metal"), a Delaware corporation; and Victor Industries Corporation of California ("Victor Industries"), a California corporation. The defendants listed in this paragraph will be referred to, collectively, as "Defendants." DTSC's fourth, fifth and six claims for relief pertain solely to the Airport Site.



1 Certain Defendants filed cross-complaints seeking contribution and/or
2 indemnification for costs related to the 20th Street Site. These third party defendants include
3 Victor Industries Corporation of California, a Delaware corporation; Victor Industries
4 Corporation, a New York corporation; United American Metals Eastern Division, a business
5 entity of unknown form; United American Metals Corporation, a New York corporation; United
6 American Metals Corporation of Illinois, an Illinois corporation; Eclipse Tube Company, a New
7 York corporation; U.S. Can Corporation, a Delaware corporation; Gorman Metals Company, a
8 California corporation; Victor Management Company, an Arkansas corporation, White Metal
9 Specialties Corporation, a New York corporation; and Victor Metal Products Corporation, a New
10 York corporation. These entities, and any other entity in which Victor Muscat owned 5% or
11 more of the stock, or of which Victor Muscat was an officer or director, and which owned or
12 operated at the Site, hereinafter shall be referred to as the "Victor Entities." Third party
13 defendants also include Victor H. Muscat ("Muscat"), son of Victor Muscat. Cross-complaints
14 pertaining to any other person or entity not named in this paragraph are not encompassed within
15 or resolved by this Settlement Agreement and Consent Decree.

16 DTSC, the Defendants and Muscat have reached an agreement which, if approved
17 by this Court, would settle all claims in this action relating to the 20th Street against the
18 Defendants, the Victor Entities and Muscat. DTSC, the Defendants and Muscat now enter into
19 this Settlement Agreement and Consent Decree ("Consent Decree"), and move the Court to
20 approve it and enter it as a consent decree of the Court, in order to settle all claims against the
21 Defendants, the Victor Entities and Muscat relating to the 20th Street Site on the terms and
22 conditions set forth below.

23 ///

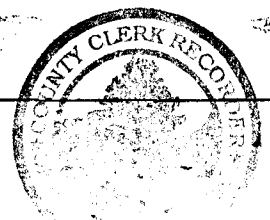
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25 ///

26 ///

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DEFINITIONS

A. All terms used in this Consent Decree that are defined in section 101 of CERCLA, 42 U.S.C. § 9601, shall have the same meaning set forth in that section.

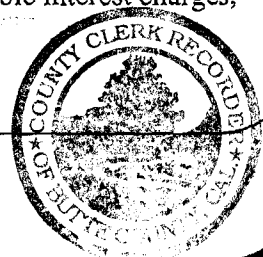
B. "Attributable," as used in this Consent Decree, shall have its generally-accepted meaning, and shall include, but not be limited to, attribution based in any way upon the ownership, operation, leasing or occupation of, or involvement at, the Site.

C. "DTSC," as used in this Consent Decree, shall mean DTSC; its predecessors including, but not limited to, the Toxic Substances Control Program of the State of California Department of Health Services; and its successors.

D. "IRAW," as used in this Consent Decree, shall mean the Draft Final Interim Remedial Action Workplan submitted by WRI to DTSC in March 2003.

E. The "20th Street Site" or "Site," as used in this Consent Decree, shall refer to 365 and 395 East 20th Street, Chico, Butte County, California, and to any place nearby 365 and 395 East 20th Street where perchloroethylene ("PCE") or trichloroethylene ("TCE") released at or from 365 East 20th Street and/or 395 East 20th Street, or any hazardous substance-breakdown product of PCE or TCE, has come to be deposited. Legal descriptions of 365 and 395 East 20th Street, Chico, are attached as Exhibit A and are incorporated herein by this reference.

F. "Response Costs", as used in this Consent Decree, shall include all costs of "removal," "remedial action" or "response" (as those terms are defined by section 101 of CERCLA), incurred or to be incurred by DTSC in response to the release and threatened release, described in the IRAW, of PCE or TCE at the Site, or in response to any other release of hazardous substances at the Site, to the extent that the release is attributable to Victor Industries-Florida, Victor Metal, Victor Industries, the Victor Entities or VIC, Inc. Said term shall include, but not be limited to, direct labor costs; contractor, consultant and expert costs; travel and any other out-of-pocket expenses; the costs of identifying, developing evidence against, and pursuing claims against persons or entities liable for the release or threatened release of hazardous substances at the Site; indirect costs; oversight costs; applicable interest charges; and attorneys' fees.



1 G. "Party" or "Parties", as used in this Consent Decree, shall mean one or all
2 of the parties to this Consent Decree, as indicated by the context in which that term is used.

3 RECITALS

4 A. DTSC is the California state agency with primary jurisdiction over the
5 response to the release and threatened release of hazardous substances at the Site.

6 B. DTSC began to investigate the release and threatened release of hazardous
7 substances at the Site in or about 1986. Subsequent investigation of the soil at, and the ground
8 water beneath, the Site revealed the presence of TCE in soil and/or ground water. TCE is a
9 "hazardous substance" within the meaning of 42 U.S.C. § 9601(14).

10 C. Under DTSC's supervision, pursuant to the Court's injunction and order of
11 August 5, 1993, and consistent with DTSC's May 1992 Imminent or Substantial Endangerment
12 Determination and Remedial Action Order, WRI installed a drinking water line to the Stanley
13 Park subdivision (which was in operation by June 1994); submitted a Remedial
14 Investigation/Feasibility Study Workplan in January 1994; and submitted a Final Draft Remedial
15 Investigation Report and a Feasibility Study Report in October 1994, which DTSC approved in
16 November 1994. WRI conducted quarterly ground water sampling until December 1994. WRI
17 completed one additional round of ground water sampling in June 1997 and some additional
18 sampling in 1999. Pursuant to a Stipulation and Order of this Court dated September 22, 2000,
19 WRI performed additional characterization work at the Site, including installing additional
20 ground water monitoring wells, conducting additional sampling and installing three extraction
21 and treatment wells. In addition, WRI submitted the IRAW to DTSC in March 2003. The
22 section of the IRAW entitled "Background" is attached to this Consent Decree as Exhibit B and
23 incorporated by reference.

24 D. DTSC has incurred, and will continue to incur, Response Costs conducting
25 and supervising activities in response to the release and threatened release of hazardous
26 substances at the Site. Those activities have included and will include supervision of soil and
27 ground water sampling at the Site and completion of the interim and final Site remedies.

28 E. The first, second, third and seventh claims for relief in the Complaint



1 allege, among other things:

2 1. that each of the Defendants (or its predecessor) currently owns
3 and/or operates 365 and 395 East 20th Street, Chico, California, or owned and/or operated at 365
4 and 395 East 20th Street, Chico, California at a time when hazardous substances were released or
5 threatened to be released at or from it;

6 2. that hazardous substances were released or threatened to be
7 released at the Site;

8 3. that removal and remedial action was and is necessary to remove
9 and remedy the hazardous substances released and threatened to be released at the Site;

10 4. that DTSC has incurred Response Costs conducting and
11 supervising removal and/or remedial activities in response to the release and threatened release of
12 hazardous substances at the Site;

13 5. that each of the Defendants is jointly and severally liable to DTSC
14 for all of its unreimbursed Response Costs;

15 6. that each of the Defendants is jointly and severally liable for
16 conducting all activities necessary to remedy the release of hazardous substances at the Site;

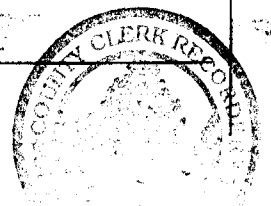
17 7. that the presence of hazardous substances in the soil of, and the
18 ground water beneath, the Site constitutes a public nuisance;

19 8. that each of the Defendants is responsible for causing, contributing
20 to, or maintaining that public nuisance; and

21 9. that each of the Defendants is liable for abating that public
22 nuisance.

23 F. The Complaint seeks to recover all unreimbursed Response Costs that
24 have been and will be incurred by DTSC, and certain declaratory and injunctive relief.

25 G. Each of the Parties represents and acknowledges that, in deciding whether
26 to enter into this Consent Decree, it has not relied on any statement of fact, statement of opinion,
27 or representation, express or implied, made by any other Party. Each of the Parties (other than
28 Tupack) acknowledges that it has been informed by Tupack that (1) Tupack formed a "Tupack



1 USA, Inc." in Delaware on March 8, 2001, of which Tupack has at all times been the sole
2 shareholder thereof, and that said corporation has never had assets in excess of \$1,000;
3 and (2) in 2002 Tupack entered into a warehouse/service arrangement with a
4 service provider in the State of New Jersey, since which time Tupack has maintained a supply of
5 its products at such facility. Each of the Parties has investigated the subject matter of this
6 Consent Decree to the extent necessary to make a rational and informed decision to execute it
7 and has consulted independent counsel.

8 H. This Consent Decree was negotiated and executed by the Parties in good
9 faith to avoid prolonged and complicated litigation. DTSC, moreover, has negotiated and
10 executed this Consent Decree to further the public interest.

11 * * * * *

12 The Court, on the motion and with the consent of each of the Parties, hereby
13 ORDERS, ADJUDGES AND DECREES as follows:

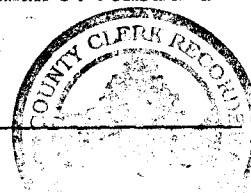
14 1. JURISDICTION AND VENUE

15 1.1 The Court has subject matter jurisdiction over the matters alleged in this
16 action pursuant to 28 U.S.C. section 1331 and 42 U.S.C. section 9613(b). Venue is appropriate
17 in this district pursuant to 42 U.S.C. section 9613(b). The Court, further, has the authority to
18 enter this Consent Decree as a consent decree of the Court. While for purposes of this Consent
19 Decree, personal jurisdiction is not disputed, nothing in this Consent Decree will prejudice,
20 waive, or impair any properly-preserved right to assert lack of personal jurisdiction in any other
21 or further legal proceeding.

22 2. SETTLEMENT OF DISPUTED CLAIMS

23 2.1 This Consent Decree represents a fair, reasonable and equitable settlement
24 of the matters addressed herein.

25 2.2 This Consent Decree does not constitute an admission by the Defendants,
26 the Victor Entities or Muscat of any of the allegations of the Complaint, including those
27 allegations pertaining to the 20th Street Site. Nothing in this Consent Decree shall be construed
28 as an admission of any issue of law or fact or of any violation of law.



2.3 Except as set forth in section 8 of this Consent Decree, nothing in this Consent Decree shall prejudice, waive, or impair any right, remedy or defense that the Defendants, the Victor Entities and Muscat may have in any other or further legal proceeding. Nothing in this section shall affect the covenant not to sue effected by section 7.1 of this Consent Decree.

2.4 Each Party shall bear the litigation costs and attorneys' fees it has incurred in connection with the litigation of the first, second and third claims for relief in the Complaint, those portions of the seventh claim for relief in the Complaint that concern the 20th Street Site, and all cross-claims and third-party claims relating to the 20th Street Site.

3. **PAYMENT OF DTSC'S RESPONSE COSTS**

3.1 Within thirty (30) days of the Court's approval and entry of this Consent Decree as a consent decree of the Court, DTSC shall be paid the sum of \$5,925,000 towards past Response Costs incurred by DTSC and Response Costs that will be incurred by DTSC in the future. This payment shall be made by or on behalf of certain of the Defendants and Victor Entities.

3.2 The payment required by section 3.1, above, shall be made by certified or cashier's check made payable to Cashier, California Department of Toxic Substances Control, and shall bear on its face both the docket number of this proceeding and the phrase "Site Code 100178." That payment shall be sent to:

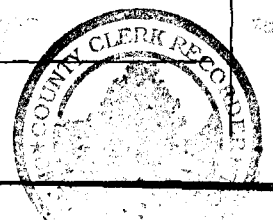
Department of Toxic Substances Control
Accounting/Cashier
400 P Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

A copy of the check shall be mailed to:

James Tjosvold, P.E., Chief
Northern California - Central Cleanup Operations Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

///

///



1 4. **RIGHT TO OPERATE EXISTING MONITORING WELLS**

2 4.1 By executing this Consent Decree, all Parties agree that DTSC will obtain
3 unrestricted access to and the right to operate and maintain all existing monitoring wells, to the
4 extent that such access or right is possessed by the Parties, or any of them.

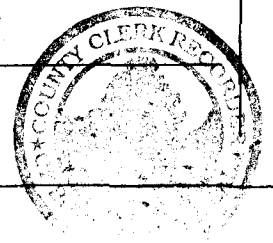
5 4.2 Neither WRI nor the Estate Defendants own the existing monitoring wells
6 previously installed at, or for investigation of, the Site.

7 5. **RESTRICTIONS ON USE OF AND SALE OF PROPERTY**

8 5.1 In consideration for the covenants not to sue effected by sections 7 and 8
9 of this Consent Decree, WRI and the Estate Defendants, to the extent of their respective
10 ownership interests, if any, agree to the imposition of restrictions on the future use of the real
11 property set forth in the Covenant to Restrict Use of Property (the "Covenant"), attached hereto
12 as Exhibit C and incorporated by reference, and further agree to execute the Covenant upon the
13 Court's entry of this Consent Decree as a consent decree of the Court. In addition, any contract
14 for sale of said property shall include as a term that the buyer will allow DTSC reasonable access
15 to the property to conduct characterization and/or remediation of the Site.

16 WRI and the Estate Defendants agree that they will not seek from DTSC, the other
17 Defendants, the Victor Entities or Muscat any consideration or compensation for their execution
18 of the Covenant apart from the covenants not to sue effected by sections 7 and 8 of this Consent
19 Decree, and hereby waive any right, claim or cause of action for any such consideration or
20 compensation.

21 5.2 On entry of this Consent Decree as a consent decree of the Court, DTSC
22 will obtain an abstract of judgment and record it with the Butte County Recorder's Office. WRI
23 and Estate Defendants agree that DTSC will thereby obtain a lien against the real property at 365
24 and 395 East 20th Street and will be entitled to the proceeds of any sale of that property. WRI
25 and Estate Defendants agree that any lien held by them will be subordinated to DTSC's lien.
26 In DTSC's view, it is in the public's interest that the property be sold within a reasonable time
27 after entry of this Consent Decree. Accordingly, DTSC reserves its right to file a motion in
28 Superior Court, Judicial District of Stamford/Norwalk at Stamford requesting an order that the



property be sold on reasonable terms and within a reasonable time after entry of this Consent Decree. WRI and/or Estate Defendants agree to inform DTSC of the terms of all offers to buy the real property at 365 and 395 East 20th Street. After being fully informed of any such offer, DTSC shall have ten (10) days to submit objections to the terms of sale, including the sale price, to the Superior Court, Judicial District of Stamford/Norwalk at Stamford.

6. **RESERVATION OF RIGHTS**

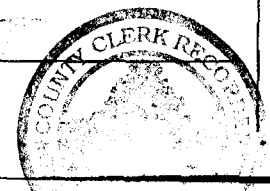
6.1 Except as expressly provided in this Consent Decree, nothing in the Consent Decree is intended, nor shall be construed, to preclude DTSC from exercising its authority under any law, statute or regulation. Furthermore, nothing in this Consent Decree is intended, nor shall be construed, to preclude any state agency, department, board or entity, other than DTSC, or any federal or local agency, department, board or entity, from exercising its authority under any law, statute or regulation.

7. **COVENANT NOT TO SUE BY DTSC**

7.1 Conditioned upon the Defendants' payment of the amount specified in section 3, DTSC covenants not to sue the Defendants pursuant to CERCLA, pursuant to the HSAA, or pursuant to any other statute or regulation or common law theory, to: (1) recover DTSC's Response Costs; or (2) require the Defendants to conduct removal or remedial activities (a) in response to the release or threatened release, described in the IRAW, of PCE or TCE at the Site, or (b) in response to any other release of hazardous substances at the Site to the extent that the release is attributable to Victor Industries-Florida, Victor Metal, Victor Industries, the Victor Entities or VIC, Inc.

7.2 Upon the Defendants' payment of the amount specified in section 3, this Consent Decree constitutes and will be treated as a full and complete defense to, and forever will be a complete bar to, the commencement or prosecution of any claims, causes of action or forms of relief described in section 7.1.

7.3 The covenant not to sue set forth in section 7.1, above, does not pertain to any matters other than those expressly specified therein. DTSC reserves, and this Consent Decree is without prejudice to, all rights, claims and causes of action that DTSC may have with



1 respect to all other matters.

2 8. **COVENANTS NOT TO SUE BY DEFENDANTS, THE VICTOR**
3 **ENTITIES AND MUSCAT**

4 8.1 The Defendants covenant not to sue, and agree not to assert any claims or
5 causes of action against DTSC, or its contractors or employees, for any costs or damages they
6 might incur, or for any injuries or losses they might suffer, as a result of any DTSC response
7 activity in connection with the Site. The Defendants further covenant not to sue, and agree not to
8 assert any claims or causes of action against, DTSC, or its contractors or employees, to recover
9 any costs they have incurred conducting removal or remedial activities at and for the Site.

10 8.2 The Defendants covenant not to sue and agree not to assert any claims or
11 causes of action against each other (a) arising out of or related to the release or threatened
12 release, described in the IRAW, of PCE or TCE at the Site, or (b) arising out of or related to any
13 other release of hazardous substances at the Site to the extent that the release is attributable to
14 Victor Industries-Florida, Victor Metal, Victor Industries, the Victor Entities or VIC, Inc.

15 9. **EFFECT OF CONSENT DECREE**

16 9.1 This Consent Decree constitutes the resolution of the Defendants' liability
17 to DTSC in a judicially-approved settlement within the meaning of section 113(f)(2) of
18 CERCLA, 42 U.S.C. section 9613(f)(2). This Consent Decree requires certain Defendants to
19 make a significant contribution towards DTSC's past and future Response Costs, which will be
20 used in part to effect a remedy at the Site.

21 9.2 Accordingly, upon entry of this Consent Decree as a consent decree of the
22 Court:

23 9.2.1 The Defendants, the Victor Entities and Muscat shall be entitled to
24 protection against all claims for contribution, pursuant to section 113(f)(2) of CERCLA, 42
25 U.S.C. § 9613(f)(2), for the "Matters Addressed" by this Consent Decree, to the fullest extent
26 permitted by law. The "Matters Addressed" by this Consent Decree are all actions taken or to be
27 taken by DTSC, by any of the Defendants, the Victor Entities or Muscat, or by anyone not a party
28 to this Consent Decree, in response to the release or threatened release, described in the IRAW,

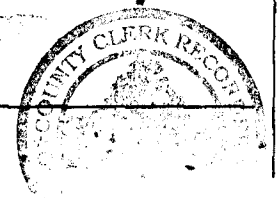


1 of PCE or TCE at the Site, and in response to any other release of hazardous substances at the
2 Site, to the extent that the release is attributable to Victor Industries-Florida, Victor Metal,
3 Victor Industries, the Victor Entities or VIC, Inc., and all costs incurred or to be incurred by
4 DTSC, by any of the Defendants, the Victor Entities or Muscat, or by anyone not a party to this
5 Consent Decree, in response to said releases or threatened releases.

6 9.2.2 Without limiting section 9.2.1 hereof, this Consent Decree shall, to
7 the fullest extent permitted by law, prevent the Defendants, the Victor Entities or Muscat from
8 being held liable to anyone not a Party to this Consent Decree for any claims for contribution,
9 indemnity or the like, asserted under any federal, state or common law, arising out of or related to
10 any response, cleanup, removal or remedial actions or costs, which anyone not a Party to this
11 Consent Decree may take, incur or defray at any time in response to the release or threatened
12 release, described in the IRAW, of PCE or TCE at the Site, and in response to any other release
13 of hazardous substances at the Site, to the extent that the release is attributable to Victor
14 Industries-Florida, Victor Metal, Victor Industries, the Victor Entities or VIC, Inc.

15 9.3 Except as specifically provided in this Consent Decree, nothing in this
16 Consent Decree is intended, nor shall be construed, to waive, release or otherwise affect any
17 right, claim or cause of action held by any Party against, or to provide a covenant not to sue to,
18 anyone not a party to this Consent Decree, or to in any way limit, restrict, or impair the right of
19 any Party to assert rights, claims, causes of actions and defenses against anyone not a party to this
20 Consent Decree. Except as specifically provided in this Consent Decree, the Parties expressly
21 reserve any rights, claims, or causes of actions they might have against anyone not a party to this
22 Consent Decree.

23 9.4 This Consent Decree shall apply to and be binding upon all Parties and
24 each of their respective successors and assigns. This Consent Decree shall inure to the benefit of
25 all Parties and each of their respective insurers, successors and assigns. This Consent Decree
26 shall apply to, bind and inure to the benefit of the Victor Muscat Trusts. The Consent Decree is
27 not intended to and does not confer any benefit upon any individual or entity not a Party or
28 specifically described in this paragraph.



10. NOTIFICATION

Notification to or communication among the Parties as required or provided for in any section of this Consent Decree, other than section 3, shall be addressed as follows:

As to DTSC:

James Tjosvold, P.E., Chief
Northern California – Central Cleanup Operations Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

As to Campbell, Tiberiis, and the Tackman Estate:

Dale C. Campbell, Esq.
Weintraub Genshlea Cediak Sproul
400 Capitol Mall, 11th Floor
Sacramento, CA 95814

As to WRI:

Philip C. Hunsucker, Esq.
Brian L. Zagon, Esq.
Resolution Law Group, P.C.
3717 Mount Diablo Boulevard, Suite 200
Lafayette, CA 94549

- and -

David W. Schneider, Esq.
Tyler Cooper & Alcorn, LLP
205 Church Street
P. O. Box 1936
New Haven, CT 06509-1910

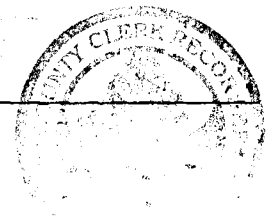
- and -

Western Resources, Inc.
c/o Jerald Greenberg
P. O. Box 8
Armonk, NY 10504-0008

As to VIC, Inc.:

Craig C. Allison, Esq.
Stevens and O'Connell
400 Capitol Mall, Suite 1450
Sacramento, CA 95814

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1 As to Tupack:

2 J. Hayes Kavanagh, Esq.
3 Kavanagh Maloney & Osnato LLP
4 415 Madison Avenue
New York, NY 10017

5 As to the McGowan Estate and Faye McGowan:

6 Michael T. Shepherd, Esq.
7 Law Offices of Michael T. Shepherd
8 1367 East Lassen Avenue, Suite 1
Chico, CA 95973

9 As to Victor H. Muscat:

10 Victor H. Muscat
11 972 Putney Road, PMB 151
Brattleboro, VT 05301

12 11. MODIFICATION OF SETTLEMENT AGREEMENT AND
13 CONSENT DECREE

14 This Consent Decree may only be modified upon the written approval of the
15 Parties and the Court.

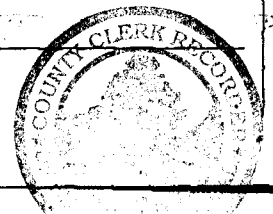
16 12. AUTHORITY TO ENTER

17 Each signatory to this Consent Decree certifies that he or she is fully authorized
18 by the party he or she represents to enter into this Consent Decree, to execute it on behalf of the
19 party represented and legally to bind that party.

20 WRI has the power, after approval by the Superior Court for the State of
21 Connecticut, to bind the Victor Muscat Trusts. By executing this Consent Decree, WRI intends
22 to and does bind the Victor Muscat Trusts to the terms and conditions of this Consent Decree.

23 Defendants Victor Industries-Florida, Victor Metal, and Victor Industries, and the
24 Victor Entities, all defunct corporations without officers or directors, were served in this action
25 by service on the Secretary of State. To date, no person with authority to sign on behalf of these
26 corporations has been identified. Accordingly, on the Court's approval and entry of this consent
27 decree as a Consent Decree of the Court, Victor Industries-Florida, Victor Metal, Victor
28 Industries, and the Victor Entities shall be deemed signatories and Parties to the Consent Decree.

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13. **INTEGRATION**

This Consent Decree, including the exhibits and other materials incorporated herein by reference, constitutes the entire agreement between DTSC and each of the Defendants, between DTSC and each of the Victor Entities, and between DTSC and Muscat, and may not be amended or supplemented except as provided for in this Consent Decree. There are, or may be, other agreements among some or all of the Defendants, the Victor Entities, and Muscat, or their respective insurers. No agreement entered into by some or all of the Defendants, the Victor Entities, and Muscat, or their respective insurers, other than this Consent Decree, shall be evidence of the proper construction or effect of this Consent Decree.

14. **RETENTION OF JURISDICTION**

The Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

15. **EXECUTION OF DECREE**

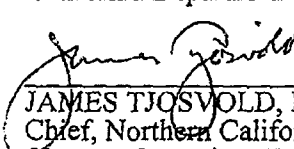
This Consent Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. **APPROVALS OF PARTIES**

Plaintiff State of California, on behalf of DTSC, consents to this Consent Decree by its duly authorized representative as follows:

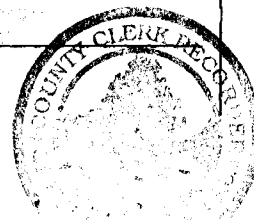
STATE OF CALIFORNIA, on behalf of the
California Department of Toxic Substances Control

Dated: May 4, 2004



JAMES TJOSVOLD, P.E.
Chief, Northern California - Central
Cleanup Operations Branch, State of
California Department of Toxic
Substances Control

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1 Defendant Albert Campbell, as executor of the Estate of Victor Muscat, consents
2 to this Consent Decree as follows:

3 ALBERT CAMPBELL

4 Dated: _____

5

6 Defendant Robert Tiberiis, as executor of the Estate of Victor Muscat, consents to
7 this Consent Decree as follows:

8 ROBERT TIBERIIS

9 Dated: _____

10

11 Defendant Western Resources, Inc., as receiver of the Victor Muscat
12 Testamentary Trusts, consents to this Consent Decree by its duly authorized representative as
13 follows:

14 WESTERN RESOURCES, INC., as Receiver for
15 the Victor Muscat Trusts U/C/O Reaffirmed
April 5, 1995

16 Dated: May 5, 2004

17

By:

Jerald Greenberg
JERALD GREENBERG

18

Its:

PRESIDENT

19

20 Defendant VIC, Inc. consents to this Consent Decree by its duly
21 authorized representative as follows:

22 VIC, INC.

23

Dated: _____

24

By: _____

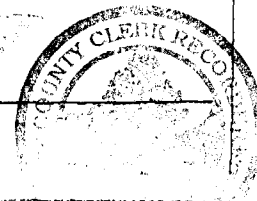
Its: _____

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1 Defendant Albert Campbell, as executor of the Estate of Victor Muscat, consents
2 to this Consent Decree as follows:

ALBERT CAMPBELL

3
4 Dated: _____

5
6 Defendant Robert Tiberiis, as executor of the Estate of Victor Muscat, consents to
7 this Consent Decree as follows:

8 ROBERT TIBERIIS

9
10 Dated: _____

11 Defendant Western Resources, Inc., as receiver of the Victor Muscat
12 Testamentary Trusts, consents to this Consent Decree by its duly authorized representative as
13 follows:

14 WESTERN RESOURCES, INC., as Receiver for
15 the Victor Muscat Trusts U/C/O Reaffirmed
16 April 5, 1995

17 Dated: _____ By: _____

JERALD GREENBERG

18 Its: PRESIDENT

19
20 Defendant VIC, Inc. consents to this Consent Decree by its duly
21 authorized representative as follows:

22 VIC, INC. a dissolved corporation

23 Dated: _____ By: *x [Signature]*

24 Its: *Thomas Reisner*

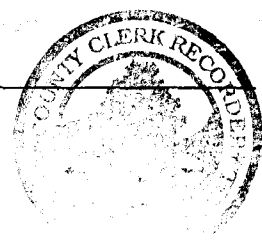
Its former President

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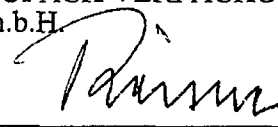
Defendant Tupack Verpackungen Gesellschaft m.b.H.

consents to this Consent Decree by its duly authorized representative as follows:

TUPACK VERPACKUNGEN GESELLSCHAFT
m.b.H.

Dated: _____

By: X



Its:

Thomas Reisner, CEO

Defendant Scott McGowan, executor of the Estate of Clay McGowan, consents to
this Consent Decree as follows:

SCOTT MCGOWAN

Dated: _____

Defendant Faye McGowan consents to this Consent Decree as follows:

FAYE MCGOWAN

Dated: _____

Third-Party Defendant Victor H. Muscat consents to this Consent Decree as
follows:

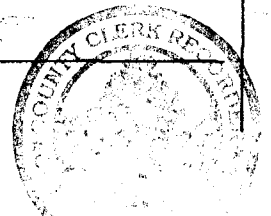
VICTOR H. MUSCAT

Dated: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

UNITED STATES DISTRICT JUDGE



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Defendant Tupack Verpackungen Gesellschaft m.b.H.

consents to this Consent Decree by its duly authorized representative as follows:

TUPACK VERPACKUNGEN GESELLSCHAFT
m.b.H.

Dated: _____

By: _____

Its: _____

Defendant Scott McGowan, executor of the Estate of Clay McGowan, consents to
this Consent Decree as follows:

SCOTT MCGOWAN

Dated: 1/16/04

Scott A. McGowan

Defendant Faye McGowan consents to this Consent Decree as follows:

FAYE MCGOWAN

Dated: 1/23/04

Faye McGowan

Third-Party Defendant Victor H. Muscat consents to this Consent Decree as
follows:

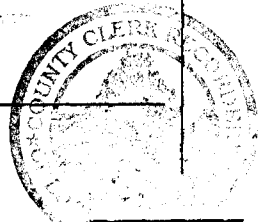
VICTOR H. MUSCAT

Dated: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

UNITED STATES DISTRICT JUDGE



Defendant Tupack Verpackungen Gesellschaft m.b.H.

consents to this Consent Decree by its duly authorized representative as follows:

TUPACK VERPACKUNGEN GESELLSCHAFT
m.b.H.

Dated: _____

By: _____

Its: _____

Defendant Scott McGowan, executor of the Estate of Clay McGowan, consents to
this Consent Decree as follows:

SCOTT MCGOWAN

Dated: _____

Defendant Faye McGowan consents to this Consent Decree as follows:

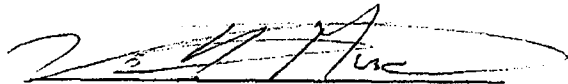
FAYE MCGOWAN

Dated: _____

Third-Party Defendant Victor H. Muscat consents to this Consent Decree as
follows:

VICTOR H. MUSCAT

Dated: 1/12/04



IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

UNITED STATES DISTRICT JUDGE



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Defendant Tupack Verpackungen Gesellschaft m.b.H.

consents to this Consent Decree by its duly authorized representative as follows:

TUPACK VERPACKUNGEN GESELLSCHAFT
m.b.H.

Dated: _____

By: _____

Its: _____

Defendant Scott McGowan, executor of the Estate of Clay McGowan, consents to
this Consent Decree as follows:

SCOTT MCGOWAN

Dated: _____

Defendant Faye McGowan consents to this Consent Decree as follows:

FAYE MCGOWAN

Dated: _____

Third-Party Defendant Victor H. Muscat consents to this Consent Decree as
follows:

VICTOR H. MUSCAT

Dated: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: June 10, 2004


UNITED STATES DISTRICT JUDGE

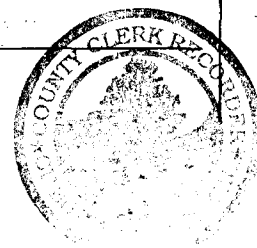


EXHIBIT A



11-342423
pg 131

EXHIBIT A

PARCEL ONE:

A portion of Section 36, Township 22 North, Range 1 East, M.D.B. & M., Butte County, State of California, said portion being more particularly described as follows:

BEGINNING at the point of intersection of the Southeasterly line of 20th Street (formerly 8th Street), as shown on the Official Map of Mulberry Tract Subdivision No. 1, recorded in the office of the Recorder of the County of Butte, State of California, on March 14, 1907, in Map Book 6 at page 90, and the Northeasterly line of that certain right of way 33.0 feet wide conveyed by A. F. Jones to Northern Electric Company by Deed recorded September 18, 1905, in Book 83 of Deeds, at page 360, Butte County Recorder, from which point the point of intersection of the Southeasterly line of said 20th Street and the Northeasterly line of Park Avenue bears South 35°50' West 33.0 feet; thence from said point of beginning along said Southeasterly line of said 20th Street, North 35°50' East, a distance of 631.61 feet to an iron pipe from which the intersection of the Southerly production of the centerline of Hemlock Street as shown on the Map of said Mulberry Tract, with the Southeasterly line of said 20th Street; bears North 35°50' East, a distance of 2.39 feet; thence leaving the Southeasterly line of said 20th Street, South 54°12' East, a distance of 695.25 feet to a one inch iron pipe; thence South 68°59' West, a distance of 486.90 feet to a

BOOK 2423 PAGE 132



one inch iron pipe marking the point of 558.14 foot radius tangent curve to the right; thence Southwesterly along said curve through an angle of $38^{\circ}26'30''$ (the chord of said curve bears South $88^{\circ}12'10''$ West 367.46 feet) an arc distance of 394.57 feet; thence North $54^{\circ}10'$ West along the said Northeasterly line of said 33 foot easement conveyed by A. F. Jones to Northern Electric Company, a distance of 137.97 feet to the point of beginning.

EXCEPTING THEREFROM the following described property:

A portion of Section 36, Township 22 North, Range 1 East, M.D.B. & M., Butte County, State of California, said portion being more particularly described as follows:

Beginning at the point of intersection of the southeasterly line of 20th Street (formerly 8th Street) as shown on the Official Map of Mulberry Tract Subdivision No. 1. filed in the office of the Recorder of the County of Butte, State of California, on March 4, 1907, in Map Book 6 at page 90, and the northeasterly line of that certain right of way 33.0 feet wide conveyed by A. F. Jones to Northern Electric Company by deed recorded September 18, 1905, in Book 83 of Deeds, at page 360, Butte County Records, from which point the point of intersection of the southeasterly line of said 20th Street and the northeasterly line of Park Avenue bears South $35^{\circ}50'$ West 33.0 feet; thence from said point of beginning along said southeasterly line of said 20th Street North $35^{\circ}50'$ East a distance of 271.1 feet to a point; thence South $54^{\circ}10'$ East 459.52

